Testimony of Mr. William G. Walter, Chairman, President, and Chief Executive Officer, FMC Corporation: "The Effects of Chinese Imports on U.S. Businesses;" House Appropriations Subcommittee on Commerce, State, the Judiciary and Related Agencies; May 22, 2003.

Mr. Chairman, Ranking Member Serrano, and members of the subcommittee, thank you for the opportunity to testify on issues related to our government's trade policies towards China. I am pleased to be accompanied today by Mr. Douglas Parker, President of Local 76 of the International Chemical and Atomic Worker's Union of Tonawanda New York.

FMC Corporation is a diversified chemical company serving agricultural, industrial and consumer markets globally, including those in China. During the debate over granting Normal Trade Relations to China on a permanent basis (PNTR), both opponents and proponents (including FMC), understood that China represents a significant opportunity for US export and investment. The issue, in a word, was the "cost" of that opportunity measured from a number of perspectives. Those included the potential costs to our own economy versus what was hoped would be the mutually shared benefits from a rising tide of trade.

Since enactment of PNTR, the explosive growth in the Chinese economy has given dimension to some of the costs, and brought into clearer focus the significant challenges that must be addressed by the U.S. government and U.S. industry if China is to become a viable trading partner. We are now in a transition period following China's accession to the World Trade Organization (WTO). The 2003 National Trade Estimate Report on Foreign Trade Barriers notes progress, but also "serious concerns" with respect to China's implementation of its WTO commitments. With the 2002 trade deficit with China at over $100 billion, and projected to significantly increase again this year, it is clear these challenges must be better defined. We appreciate the leadership this subcommittee is taking in helping to bring perspective to these issues.

For my part, let me review the issues from the perspective of a company that is investing in China, exporting to China, and competing in the global marketplace with Chinese firms:

First, FMC has made substantial investment in China and we are growing our asset base there to serve agricultural, consumer and industrial markets. We also have relationships with affiliated Chinese firms who serve us in licensing, tolling, distribution or service capacities. We have plans for future projects that we will continue to assess against the progress China makes on the rules that govern foreign investment there, one of the areas where the Administration and those of us in the U.S. private sector have witnessed substantial progress.

As we noted during the PNTR debate, when we do invest in China, it is our goal to bring with us basic ethical and managerial assumptions about labor relations, safety, the environment and community interaction that are embodied in our own corporate codes of conduct. We believe it is important for us to export to China not only our products and services, but also our best business practice.

Second, while we export chemicals to China, the volume of those exports has lagged our expectations. In large part this is the result of trade barriers China has imposed on many chemical products. These barriers have ramifications in other Asian markets as well. For example, though FMC is the low cost producer of natural soda ash in the world, a material used in glass production, the Chinese impose a Value Added Tax (VAT) on both manufacturing and shipping costs associated with soda ash shipped into China. This puts US soda ash producers at a disadvantage versus Chinese producers in their domestic market. Moreover, the VAT is then rebated to Chinese producers in the form of duty drawbacks to Chinese soda ash exporters. This puts U.S. producers at a disadvantage in South Asian markets, which are a target for Chinese export. This is a specific example of the way China is protecting a less efficient, energy intensive mode of chemical production (i.e., synthetic soda ash production) at the expense of low cost US producers of natural soda ash.

Third, and to the specific questions posed for this hearing, we are being put at a competitive disadvantage in our own domestic markets by what we believe are Chinese trade practices that are inconsistent with its WTO membership; practices our own trade laws were established to address. We, and others you are hearing from today, do not believe this behavior is being sufficiently addressed by our own government and we welcome this opportunity to speak to the facts in our situation.

FMC operates a persulfate chemicals plant in Tonawanda New York. We are the only US producer of this important chemical that is used in the manufacture of printed circuit boards, water treatment, adhesives, textiles, carpeting, paints and other important products. Like many chemical operations in the U.S., we have worked very hard to remain globally competitive. Since 1996, we have invested almost $50 million in our Tonawanda persulfates operation to sustain its place in intensely competitive world markets. FMC thus comes to this hearing not asking for protection, but for a fair and level playing field on which to compete.

Our "competitiveness initiative" begins with the team of workers that includes both local management and those dedicated union employees represented here today by Mr. Parker. Together they have impressed all of us with making the tough decisions necessary to keep us globally competitive. And they are doing so in spite of spiraling regulatory, energy and health care costs.

Being able to compete under fair conditions in our own backyard was the reason we brought a dumping case against Chinese manufacturers of persulfate in 1996. We presented evidence to the U.S. Department of Commerce that Chinese firms were understating their true cost of production and transportation,

and exporting their persulfates to US markets at prices well below normal value. After reviewing the evidence from both FMC and the Chinese exporters, the Department in 1997 awarded a 42.8% duty on dumped Chinese imports.

However, in subsequent administrative reviews this duty was substantially reduced, and beginning with the third annual administrative review in 2001, and subsequently in the fourth review in 2002, a zero duty was imposed on the only exporter of Chinese persulfate. Today, therefore, under the rules of US dumping law, we face the potential for an automatic revocation of the original order against Chinese dumping with the potential to allow the Chinese unimpeded access to US markets at prices that will erode our ability to compete; not only here, but globally.

Chinese production capacity has sharply expanded, though their own domestic markets for persulfate have not. The expanded capacity is clearly targeted at international markets, the largest of which are Europe and the United States. Today, the unutilized capacity in China, which could not be sustained in a market economy, is roughly equivalent to that of the sole U.S. plant. These Chinese operations are clearly poised to replace our Tonawanda facility.

The dumping of Chinese persulfate has taken a toll on our workforce in Tonawanda. Despite the investment of $50 million to improve our competitiveness globally, we have had to reduce our work force by some 40% (from 152 in 1996 to 91 in 2003). These are well paying jobs and their elimination has a negative impact on the Tonawanda economy, a community where we spend on average $21 million annually.

Mr. Chairman, we respect the administrative procedures that govern dumping cases before the Department. We have had dumping cases before the Department before. What confuses us in this case is that though the basic facts have not changed since 1996, the results in the last two years are dramatically different. Moreover, in the period which paralleled China's accession into the WTO, we would not only have expected Chinese trade practices to have changed, but also would have expected our government to intensify its scrutiny of their trade behavior. This has not been the case.

Rather, in this specific situation, the Department of Commerce, beginning in the second administrative review, chose a different basis for calculating the costs of persulfate manufacture in China; one that was far more favorable to Chinese interests. They did this by choosing a different "surrogate" company as the basis for determining the cost structure of persulfate manufacture in China. The surrogate methodology is used to determine sales, general and administration costs (SG&A). In our case, the Department inexplicably adopted a surrogate with multiple product lines where the true SG&A costs of producing persulfate were distorted by the manufacture of other chemicals. We still await an adequate explanation of why this change was made, which had a dramatic impact on the outcome of our case.

The Department in our view has also inexplicably ignored clear evidence of fraudulent practices and failed to properly verify Chinese conduct. Thus, rather than intensifying the scrutiny of Chinese export practice since their accession to WTO, it has seemed to us to reduce the intensity of its oversight. And we are not alone in perceiving this posture. In fact, we believe there is a pattern of decision-making in Chinese dumping cases that is worthy of further examination by this subcommittee.

The issues in pending dumping cases, regardless of the country, rely heavily on data submitted by foreign respondents. The Department of Commerce has no subpoena power to compel disclosure of evidence and thus must rely on the good faith of those responding. This challenge is magnified when the trading practices involve non-market economies (NME's); China being the most obvious example.

For years, Mr. Chairman, many Chinese cases were routinely decided on the basis of "available information," meaning evidence other than submitted by the Chinese producers. Suspicions about the reliability of Chinese data and Chinese circumvention of dumping duties became an issue so that in the last year of the previous administration it was proposed that a separate Deputy Assistant Secretary of Commerce and a special compliance team dedicated to China issues be established to more closely review data submissions in Chinese cases, which now number roughly twice the number as from any other country, and are likely to grow. While this measure was not adopted, it highlighted the vital importance of maintaining objectivity and accuracy in Chinese submissions and the special issues presented by Chinese dumping cases.

Let me conclude by saying, it is important to stress to this subcommittee Mr. Chairman, that FMC does not seek protection for its persulfate manufacturing operation in New York. If that were the case we would not have invested $50 million in modernizing it, nor would our workers have made the sacrifices they made. Rather, we are interested in competing with the Chinese on a fair and level playing field both internationally, and most certainly, here in our own domestic market. If allowed to do so we believe our operation in Tonawanda will experience growth that reflects its rightful global leadership position.

FMC supported PNTR in large part to ensure that China would assume its rightful place in the World Trade Organization. We maintain that expectation. But we believe we cannot ignore issues or let them go unadressed by simply classifying them as "transitional." We need a systematic approach to creating a level playing field, one that is in concert with the pace of China's steps toward being a full trading partner; one that does not leave sectors of our manufacturing vulnerable. Thank you.